

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 211 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATVARLAL AMBALAL MOCHI

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 22/04/97

ORAL JUDGEMENT (Per:Pandit.J)

The appellant-Natverlal Ambalal Mochi has been convicted for the offence under section 302 of the IPC by the learned Addl. Sessions Judge, Mehsana in Sessions

Case No. 166/87 decided on 13.9.89.

2. The prosecution case in brief is that the appellant Natverlal Ambalal Mochi was married to the deceased about 15 years ago and two children were born out of the wedlock. The appellant was addicted to drinks and gambling and he was also suspecting the character of his wife and he was accusing that the two children born to her were not his children. Due to this suspicion, he used to raise quarrels with her and also used to physically assault her. It is further case of the prosecution that on 11.9.87 at about 13 hours the appellant returned to his house under the influence of liquor and then raised a dispute with his wife regarding the paternity of his children and then physically assaulted her and sprinkled kerosene on her and then set fire to her. Thereupon the deceased Jashiben raised hue and cry. On hearing her hue and cry her sister in law i.e. sister of the appellant by name Laxmiben and her brother Hirabhai reached there. They extinguished her fire by putting quilts on her and then she was taken to Kalol Municipal hospital. There Dr. Manishaben Rameshchandra Shah p.w.5 found that she had 70 percent burns and she was having severe burn injuries. She therefore, transferred her to the civil hospital, Ahmedabad. In civil hospital, Ahmedabad her dying declaration was recorded by executive magistrate p.w. 2 Maganbhai Mulabhai Parmar. In her dying declaration she narrated the incident by saying that her husband had raised quarrel with her regarding the paternity of the child and then assaulted her and poured kerosene on her and set fire to her. On the strength of the said dying declaration recorded by the executive magistrate the police had registered offence against the present appellant and on completion of necessary investigation, charge sheet was sent against the present appellant.

3. A charge is framed against the present appellant for the offence under section 302 IPC on 23.1.89. The accused pleaded not guilty to the charge. His defence is of total denial.

4. In order to prove its case the prosecution has examined in all 15 witnesses. Out of these p.w.1 Ramanbhai Becharbhai, p.w. 6 Hirabhai Becharbhai and p.w. 4 Laxmiben Ambalal were the three persons who had immediately met the deceased and to whom she had narrated as to how she had received burns. But all these three witnesses have turned hostile. Similarly p.w. 7 Dahiben sister of accused, p.w. 8 Kalidas Mohanbhai, husband of the sister of accused and p.w. 9 Shardaben Narottamdas,

neighbour of the accused and deceased have also turned hostile. But the dying declaration recorded by the executive magistrate has been proved by p.w. 2 Maganbhai Parmar and the learned Addl. Sessions Judge has believed and accepted said dying declaration and has held the accused guilty for the offence with which he was charged and has sentenced him as aforesaid.

5. There is no dispute of the fact that Jashiben has met with death due to burn injuries. It is also not in dispute that she had sustained said burns in her house and at that time besides her husband, child and she herself nobody else was present. The said burn injuries could be either suicidal or accidental or homicidal. From the material on record it is not at all possible to hold that the burn injuries could be accidental. The time and the place of sustaining injuries clearly rules out the injuries being caused in accident. Presence of kerosene on her body and clothes rules out accidental burns. From the cross examination of all the prosecution witnesses no iota of material is brought out even to suggest that the burn injuries sustained by Jashiben could be suicidal. Even her statement under section 313 the appellant accused does not suggest that the deceased was threatening to commit suicide. It is not also submitted before us on behalf of the appellant that the burns could be suicidal. Therefore, the possibility of the burns being either accidental or suicidal is ruled out in this case.

6. It is settled law that if a dying declaration is clear and believable and acceptable then the same alone would be sufficient to hold the accused guilty of the offence punishable under section 302 IPC. It must be remembered that deceased had married the present appellant about 15 years ago and she was living with the appellant and she had also given birth to two children. If the cross examination of both the brothers of the deceased viz. p.w. 1 Ramabhai and p.w.6 Hirabhai who have shown favour to the present appellant by turning hostile, does not indicate that Jashiben had any reason to falsely implicate her husband in the incident. There is no suggestion in the cross examination of both these brothers as well as of any other witnesses who had reached the spot immediately after the incident that Jashiben had any reason to falsely implicate her husband.

7. The panchnama of the scene of the offence clearly supports the dying declaration of Jashiben. Said panchnama of the scene of offence shows that guilty by

which the body of Jashiben was covered in order to extinguish the fire were having kerosene smell. Moreover at the scene of offence, an empty kerosene tin was also found. The scene of offence is also on the Otta of the house as stated by Jashiben in her dying declaration. The other dying declaration recorded by the police after the dying declaration was recorded by Executive Magistrate is also consistent on the important aspect viz. as to how she got fire. The second dying declaration recorded is being considered by us only for the purpose of believing and corroborating the declaration recorded by the executive magistrate. It is settled law that a dying declaration even if recorded by the police could not be rejected merely because it is recorded by a police officer.

8. From the materials on record, it is not possible for us to hold that there could be reasonable doubt regarding the correctness or genuineness of the dying declaration recorded by the executive magistrate. Therefore, in the circumstances, we do not find any reason to interfere with the finding recorded by the learned Addl. Sessions Judge in holding that the accused is guilty of the offence on the strength of the dying declaration. We therefore, hold that present appeal deserves to be dismissed. We accordingly dismiss the appeal and maintain and confirm the order of conviction and sentence passed by the learned Addl. Sessions Judge, Mehsana. Appellant be informed accordingly through jail authorities.

(N.J.Pandya.J)

(S.D.Pandit.J)